

ROBERT G. GARRISON
Claimant

HILLTOP MANOR MUTUAL HOUSING
Respondent

**KANSAS EMPLOYERS WORKERS'
COMPENSATION FUND**
Insurance Carrier

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ORDER

ISSUES

On appeal, the respondent contends claimant failed to prove he injured his low back at work. Further, the respondent argues there is no evidence that claimant gave timely notice of the accident to the respondent.

Both of the above issues raised by the respondent are issues that grant Appeals Board review of a preliminary hearing order. See K.S.A. 1998 Supp. 44-534a.

Claimant established through his testimony that he had preexisting low-back problems. But those problems worsened after he lifted a heavy trash bag into his trash truck on May 25, 1999. At that time, he initially had low back pain that radiated down his right leg and the pain worsened as he continued to work through Friday, June 4, 1999.

Claimant testified that on Monday, June 7, 1999, the pain was so severe he could hardly get out of bed and could not work. Claimant and his daughter both testified that his daughter telephoned the respondent every morning from June 7, 1999, through June 10, 1999, and notified the respondent that claimant was unable to go to work because of his back hurting. On June 11, 1999, claimant went on his own for medical treatment to the VA Hospital. The June 11, 1999, VA hospital medical record was admitted into evidence at the preliminary hearing. The medical record indicates claimant gave a history that he had back pain for one week caused by lifting heavy items. Claimant returned to work on Monday, June 14, 1999, and respondent terminated claimant for not having a valid drivers license.

Claimant testified he notified James T. Gooch, the respondent's corporate secretary, on May 25, 1999, that he had hurt his back lifting a trash bag at work. Claimant also testified that he did not notify his supervisor, Sidney Bailey, of the accident on May 25, 1999, because Mr. Bailey was not in the office at that time. But claimant testified that he assumed Mr. Bailey knew of his injury because after the accident he walked with an obvious limp.

Both respondent's secretary and claimant's supervisor testified before the Administrative Law Judge at the preliminary hearing. Mr. Gooch testified he did not recall the claimant telling him on May 25, 1999, anything about hurting his back. But Mr. Gooch did recall that claimant talked to him on May 25, 1999, about lifting a trash bag. On cross-examination, Mr. Gooch admitted it was possible that claimant could have told him that he hurt his back lifting a trash bag. Mr. Bailey denied claimant reported to him that he injured his back at work. Mr. Bailey did acknowledge claimant was limping but thought the claimant was limping because of a bone spur and not an injury to his back.

The Appeals Board concludes claimant's testimony and the VA Hospital June 11, 1999, medical record establishes that claimant aggravated a preexisting low-back problem at work on May 25, 1999, and this initial aggravation worsened as he continued to perform his regular work duties up through June 4, 1999. When a worker's job duties aggravates or accelerates a preexisting condition, the aggravation becomes compensable as a work-related accident.¹

¹See Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978).

In this case, there is conflicting testimony in regard to the notice issue. The respondent's representatives and the claimant all testified in person before the Administrative Law Judge. Therefore, the Administrative Law Judge had the opportunity to assess all of the witnesses' credibility. Finding that claimant gave timely notice of accident, the Administrative Law Judge obviously had to believe claimant's testimony. The Appeals Board, therefore, finds, giving some deference to the Administrative Law Judge, that claimant provided respondent with notice of accident within ten days as required by K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's July 27, 1999, preliminary hearing Order should be, and hereby, is affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director